In the High Court of Punjab and Haryana, Chandigarh.

CWP No. 16420-CAT of 1999

Date of Decision: 30.8.2006

Jarnail Singh and others.

....Petitioners.

Versus

State of Punjab and others.

....Respondents.

Coram:- Hon'ble Mr.Justice J.S. Khehar.
Hon'ble Mr. Justice S.D. Anand.

Present: Ms. Jagdip Bains, Advocate
for the petitioner.

Ms. Renu Bala Sharma, Central Government Counsel
for the respondents.

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J.S. Khehar, J. (Oral).

The petitioners in the instant writ petition came to be appointed as Beldars in the Military Farm, Bir Dhantauri, District Kurukshetra, in 1990. It would be pertinent to mention, that the Military Farm under reference, had made a requisition to the Employment Exchange. The names of the petitioners had been sponsored by the Employment Exchange and thereupon, they were engaged at the aforesaid Military Farm. It is also clear from the pleadings of the instant case, that a seniority list of persons appointed on daily wage basis, including the petitioners, whose appointment was also on daily wage basis, had been prepared and finalised.

After the petitioners had worked for some time, they claimed regularisation in service on the basis of policy instructions dated 16.12.1991, wherein, it was, inter-alia, provided that the existing employees

appointed through the Employment Exchange, and possessing experience for a period of two years on casual basis, would be eligible for appointment in the regular establishment without further reference to the Employment Exchange. Learned counsel for the petitioners has also invited our attention to paragraph 8 of the aforesaid policy instructions, which mandates, that the programme for regularisation of casual labour under the instructions dated 16.12.1991, should be completed at the earliest, but not later than 31.1.1992.

While the petitioners were continuing as Beldars at the Military Farm, Bir Dhantauri, District Kurukshetra, they feared retrenchment. It is, therefore that the petitioners approached the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as the Administrative Tribunal), by filing Original Application No.1138-HR of 1992, claiming the right to continue in service, as also, regularisation under the policy instructions dated 16.12.1991. During the pendency of Original Application No.1138-HR of 1992, the Administrative Tribunal, vide an interim order dated 23.9.1992 directed the respondents to maintain status quo, qua all the applicants (petitioners herein). In view of the aforesaid order passed by the Administrative Tribunal, the petitioners continued to discharge their duties as Beldars till the aforesaid Original Application was finally disposed of by an order dated 28.7.1999.

The order passed by the Administrative Tribunal dated 28.7.1999 is subject matter of challenge at the hands of the petitioners through the instant writ petition.

During the course of hearing, learned counsel for the petitioners vehemently contends, that the claim of the petitioners for

regularisation matured on their completion of two years' service at the Military Farm, Bir Dhantauri, District Kurukshetra, and as such, they were entitled to be regularised against the posts of Beldars. A perusal of the impugned order passed by the Administrative Tribunal, however, reveals that the Military Farm, Bir Dhantauri, District Kurukshetra, in which the petitioners were engaged as Beldars, was disbanded during the pendency of the Original Application filed by the petitioners. Resultantly, all the employees engaged at the aforesaid Military Farm, including the petitioners, had to be retrenched.

We have considered the claim of the petitioners, as projected before us, in its entirety, and have also examined the aspect relating to the fact, that the petitioners had rendered two years' service at the time when the Original Application filed by them, was dismissed. It is, however, not possible for us to accept the instant claim of the petitioners, as has been projected before us. One of the primary pre-requisites for regularisation in service, is the subsistence of posts. Since the Military Farm at which the petitioners were engaged, has admittedly been disbanded, it is apparent, that there was no post available, against which the petitioners could be regularised when the Original Application filed by them was disposed of by the Administrative Tribunal on 28.7.1999.

In order to overcome the aforesaid determination at the hands of the Administrative Tribunal, which has been affirmed by us hereinabove, learned counsel for the petitioners invited our attention to an affidavit dated 10.7.2001 filed by the petitioners during the pendency of the instant writ petition. A perusal of the aforesaid affidavit reveals, that the Military Farm, Bir Dhantauri, District Kurukshetra, has been reopened. On the basis of the

aforesaid fact, learned counsel for the petitioners vehemently contends, that the very basis on which, the Administrative Tribunal had rejected the claim of the petitioners for regularisation, does not subsist any more, and as such, it was imperative for the respondents to now regularise the services of the petitioners. As against the aforesaid affidavit filed on behalf of the petitioners, a counter affidavit has been filed by the respondents dated 11.10.2001. Although, it is acknowledged in the reply filed by the respondents, that the Military Farm, Bir Dhantauri, District Kurukshetra, has been revived, yet it is asserted therein, that no post of Beldar existing in the Military Farm, Bir Dhantauri, District Kurukshetra, prior to its being disbanded, has been revived. It is, therefore apparent, that the position which existed at the time of disposal of the Original Application by the Administrative Tribunal, subsists till date, namely, there is no post of Beldar available at the Military Farm, Bir Dhantauri, District Kurukshetra, even at the present juncture, against which the petitioners can be accommodated or regularised.

Finding herself in the aforesaid predicament, learned counsel for the petitioners vehemently contends, that despite the appointment of the petitioners at the Military Farm, Bir Dhantauri, District Kurukshetra, they were members of the entire establishment, and to substantiate the plea, that the entire establishment comprises of a single unit, learned counsel for the petitioners asserts, that personnel used to be transferred from one unit to the other of the Military Farms, and as such, the claim of the petitioners for continuation in service, as also, for regularisation should be considered by treating the entire establishment of Military Farms as a single unit.

Having examined the instant contention of the learned counsel

for the petitioners, we are of the view, that to succeed on the plea now advanced, it would be imperative for the petitioners to establish that persons, who were inducted into service of the establishment as Beldars, subsequent to the entry into the said service by the petitioners, are continuing in service and/or have been regularised in service. Not only, the pleadings in the main writ petition are deficient, in so far as the aforesaid plea is concerned, such a plea has not been advanced even in the affidavit, filed by the petitioners dated 10.7.2001 during the pendency of the instant writ petition. It is, therefore, not possible for us to accept the instant contention of the learned counsel for the petitioners as well.

For the reasons recorded above, we find no merit in this petition. The same is, accordingly, dismissed.

(J.S. Khehar)
Judge.

(S.D. Anand)
Judge.

30.08.2006
sk.